

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

**CONTRACT BETWEEN  
THE TEXAS JUVENILE JUSTICE DEPARTMENT  
AND  
CANON SOLUTIONS AMERICA, INC.  
CON0000735**

This Contract is by and between the **Texas Juvenile Justice Department**, hereinafter "TJJD," and **Canon Solutions America, Inc., c/o Canon Financial Services, Inc., 14904 Collections Center Dr., Chicago, IL 60693-0149, Payee ID # 1223056822**, hereinafter "Contractor," for the provision of copiers and related services for all TJJD facilities in the State of Texas. This Contract is identified as Contract Number **CON0000735**.

This Agreement is composed of the following documents:

1. This Contract, including all attachments;
2. Exhibit A, Part A, Master Operating Lease Agreement;
3. Exhibit A, Part B, Maintenance and Support Agreement;
4. Exhibit B, Pricing Schedule and Equipment List;
5. Mutually agreed to and negotiated changes;
6. Contractor's Best and Final Offer received March 8, 2017;
7. Contractor's Proposal dated January 17, 2017;
8. Contractor's HUB Subcontracting Plan; and
9. Request for Proposal (RFP) #644-7-120916, issued December 9, 2016.

In the event there is conflict between the Agreement documents, the order of precedence shall be the order listed above.

This Contract shall begin on **April 1, 2017**, and remain in effect through **March 31, 2022** ("Expiration Date"). The Contract may be extended for an additional period of time, up to, but not exceeding one (1) year, provided both parties agree in writing via Contract amendment and to do so prior to the Contract Expiration Date. Any renewals shall be at the same terms and conditions, plus any approved changes to be mutually agreed upon. The rates and services listed on Exhibit B shall remain in effect for the entire term of the Contract unless a reduction in cost is negotiated and agreed during the term of the Contract. It is understood there will be an additional cost for any equipment added not currently listed on Exhibit B.

**SECTION I  
CANON SOLUTIONS AMERICA, INC.**

Services will be performed in accordance with this Contract; attached Exhibit A, Part A, Master Operating Lease Agreement (the Lessor and payee for which is Canon Financial Services, Inc.), and Part B, Maintenance and Support Agreement; attached Exhibit B, Pricing Schedule and Equipment List; Contractor's Proposal dated January 17, 2017; RFP #644-7-120916; and any mutually agreed upon changes. The services are described in detail in the above listed documents. The Multi-Functional Printer/Copiers under this lease and service agreement are located at various locations around the state as listed in Exhibit B.

**SECTION II  
TJJD**

TJJD will pay for services in accordance with documents listed above at the rates listed in Exhibit B, Pricing Schedule, dated March 14, 2017. These rates are a fixed fee for each piece of equipment that includes both the lease and maintenance charges combined. There will be no overage charges associated with this Contract. The Contractor shall provide invoices to TJJD for services performed. The Contractor shall include the Contract number on all invoices. No payment shall be made under this Contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TJJD must make all payments in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251, and Texas Government Code 403.0551, that payment owing to the Contractor under this Contract will be applied toward elimination of the Contractor's indebtedness to the state, delinquency in payment of taxes to the state, or delinquency in payment of taxes that the Comptroller administers or collects until the indebtedness or delinquency is paid in full. Payments under this Contract are subject to the

availability of appropriated funds. The Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon TJJD's receipt of funds appropriated by the Texas Legislature.

### **SECTION III CERTIFICATIONS**

#### **Article 1: Equal Opportunity**

Contractor certifies compliance with all terms, provisions, and requirements of Titles VI and VII, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other federal, state, local or other anti-discriminatory act, law, statute or regulation, along with all amendments and revisions of the acts, laws, statutes or regulations, in the performance of this Contract, and will not discriminate against any child or youth, client, employee, or applicant for employment because of race, creed, religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

#### **Article 2: Unfair Business Practices**

Contractor certifies that neither it nor its officers have been found guilty in a judicial or state administrative agency proceeding of unfair business practices as set out in the Texas Business and Commerce Code and that no officer of Contractor has served as an officer of another company which has been found guilty in a judicial or state administrative agency proceeding of unfair business practices. If the above certifications are false, this Contract is void.

#### **Article 3: Franchise Taxes**

**Section 1:** Contractor certifies that should Contractor be subject to payment of Texas franchise taxes, all franchise taxes are current. If such certification is false this Contract may be terminated at the option of TJJD or other administrative error sanctions may be taken.

**Section 2:** If Contractor is exempt from payment of Texas franchise taxes, Contractor shall so indicate by attachment to this Contract.

**Section 3:** If Contractor's payment of Texas franchise taxes becomes delinquent during the term of this Contract, Contractor will notify TJJD within 24 hours. If such delinquency cannot be cured within 24 hours and a copy of the Certification of Account Status proving payment of delinquent taxes cannot be provided to TJJD, this Contract may be terminated at the option of TJJD or other administrative error sanctions may be taken under the provisions of this Contract.

#### **Article 4: Required Disclosure of Lobbyist Activity and Certificate of Interested Parties**

Contractor agrees that if, at any time during the term of this Contract, any person who is an employee, director, subconsultant, or subcontractor of Contractor is required to register as a lobbyist under Texas Government Code Chapter 305, Contractor shall notify TJJD's Director of Business Operations and Contracts and provide timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305.

Additionally, pursuant to House Bill 1295 and Texas Government Code Section 2252.908, Contractor must submit a Certificate of Interested Parties or disclosure of interested parties on a form prescribed by the Texas Ethics Commission, currently identified as Form 1295. Prior to submission of this signed Contract to TJJD, Contractor must file Form 1295 through the online filing application process on the Texas Ethics Commission website at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). TJJD will acknowledge Contractor's Form 1295 within thirty (30) days of submission.

#### **Article 5: Notification to TJJD of Subconsultants and Subcontractors**

**Section 1:** Contractor shall notify TJJD of the selection and/or use of all subcontractors or subconsultants regularly used by Contractor in performing or assessing the performance of Contractor's duties under this Contract if paid or anticipated to be paid an amount exceeding five thousand dollars and zero cents (\$5,000.00) during the term of this Contract. All subcontractors and subconsultants are subject to prior written approval of TJJD. Approval will not be unreasonably withheld.

**Section 2:** No contractual relationship will exist between Contractor's subconsultants or subcontractors and TJJD. TJJD shall have no responsibility whatsoever for the conduct, actions, or commissions (active or passive) of any subconsultants or subcontractors in the performance of their duties under this Contract.

**Section 3:** Contractor shall be solely responsible for the management of any subconsultants or subcontractors in the performance of their duties under this Contract.

**Article 6: Compliance with Child Support, Section 231.006, Texas Family Code**

Texas Family Code Section 231.006 provides that neither a child support obligor who is more than 30 days delinquent in paying child support nor a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is eligible to receive payments from state funds under a contract to provide property, materials, or services. **Under Section 231.006, Family Code, the vendor or applicant (Contractor) certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.**

CONTRACTOR MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT.

For business entities with no identifiable owner of twenty-five percent (25%) or more of the entity, indicate with "NONE" on the first line below.

**CANON U.S.A., INC.;** [REDACTED] **100%**

Name; Social Security Number (or equivalent); Percent Ownership

**Article 7: Compliance with Section 572.054, Texas Government Code, Former Officer or Employee of TJJD**

Contractor certifies compliance with Section 572.054 of the Texas Government Code. Contractor has not employed a former officer or employee of TJJD to perform services on Contractor's behalf, to secure this Contract or to represent Contractor in any manner prohibited by Section 572.054. A false certification could result in termination of this Contract, withholding of payments, or other administrative error sanctions.

**Article 8: Compliance with Section 2252.901, Texas Government Code, Former or Retired Employee of the Agency**

Contractor certifies compliance with Texas Government Code Section 2252.901, which provides, "A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under this contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm or other business entity that the employee worked on while employed by the agency." Contractor certifies that he/she/it is not prohibited from entering into this Contract because of any prior employment with TJJD.

**Article 9: Specially Designated Nationals and Blocked Persons List; Debarment**

Contractor certifies that it is not on the Specially Designated Nationals and Blocked Persons list (SDN list) maintained by the United States Department of the Treasury Office of Foreign Assets Control (OFAC), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Contractor certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

#### **Article 10: Terrorism**

TJJD is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, and any subsequent changes made to it by cross-referencing service providers/vendors with the System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Department of the Treasury Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list (SDN list), also available at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

#### **Article 11: Convictions for Hurricane Katrina or Rita**

**Under Section 2155.006, Government Code, the vendor (Contractor) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

Under Section 2155.006(b) of the Texas Government Code, "[a] state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

#### **Article 12: Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution has, (1) violated the antitrust laws of the State of Texas under Chapter 15 of the Texas Business and Commerce Code or federal antitrust laws; or (2) communicated directly or indirectly any contents of your submitted Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

#### **Article 13: Intellectual Property Indemnification**

To the extent required by the Texas Constitution, Contractor will indemnify, defend and hold harmless the State of Texas and TJJD against any action or claim brought against the State of Texas and/or TJJD that is based on a claim that software infringes any patent rights, copyright rights, or incorporated misappropriated trade secrets. Contractor will pay any damages attributable to such claim that are awarded against the State of Texas and/or TJJD in a judgment or settlement.

If TJJD's use of the software becomes subject to a claim, or is likely to become subject to a claim, as determined through the sole opinion of TJJD, Contractor shall, at its own expense: (1) procure TJJD the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is noninfringing.

#### **Article 14: Contracting with Executive Head of State Agency**

Under Texas Government Code Section 669.003, Contractor certifies that he/she/it is not the executive head of TJJD, a person who at any time during the four years before the date of this Contract was the executive head of TJJD, or a person or business entity that employs a current or former executive head of a state agency.

#### **Article 15: Abandonment or Default**

If Contractor defaults on the Contract, TJJD reserves the right to cancel this Contract without notice and either resolicit bids or award the contract to the next best responsive and responsible contractor/service provider. The defaulting Contractor will not be considered in the resolicitation and may not be considered in future solicitations for the same type of work, unless the specifications or scope of work are significantly different. The period of suspension will be determined by TJJD based on the seriousness of the default.

In accordance with Texas Government Code Section 2261.101, Remedies and Sanctions Schedules – state agencies shall incorporate language which shall hold Contractor accountable for breach of contract or substandard performance without unfairly limiting competition.

**Article 16: Certain Bids and Contracts Prohibited**

Under Texas Government Code Section 2155.004, TJJD may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from TJJD to participate in preparing the specifications or request for proposals on which the bid or contract is based. If Contractor is not eligible, then this contract may be immediately terminated. **Under Section 2155.004, Government Code, the vendor (Contractor) certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

**Article 17: Gifts and Gratuity**

By executing this Contract, Contractor certifies that he/she/it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, discount, trip, favor, or service to a public servant in connection with this Contract. Contractor acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**Article 18: By signature hereon, the provider certifies that:**

All statements and information prepared and submitted in the response to this Contract are current, complete and accurate.

When a Texas business address is shown hereon, that address is, in fact, the legal business address of Contractor and Contractor qualifies as a "Texas Bidder" under Texas Administrative Code Title 34, Section 20.32(68).

**SECTION IV  
GENERAL PROVISIONS**

**Article 1: Relationship of Parties**

Contractor is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency neither exists nor shall be implied by the terms of this Contract. No employee of Contractor shall become an employee of TJJD by virtue of this Contract.

**Article 2: Indemnity**

Contractor agrees to be liable for, and hereby does indemnify and hold harmless TJJD and its officers, directors, agents, employees and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional or negligent acts or intentional or negligent omissions on the part of Contractor, its officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this Contract or its performance.

**Article 3: Proof of Financial Stability**

If TJJD has credible information that calls into question Contractor's ability to meet its financial obligations, TJJD may require Contractor to provide proof of financial stability. Correspondence from Contractor's independent auditor that Contractor is able to meet its current financial commitments shall suffice as proof of financial stability.

**Article 4: Liability Insurance**

**Section 1:** Contractor shall maintain liability insurance in the amount of \$300,000.00 for each occurrence of negligence.

**Section 2:** Contractor shall provide proof of insurance documents to TJJD Contracts Department, upon request.

**Section 3:** The required insurance coverage, in the above stated amount, must be maintained during the term of this Contract and through any subsequent extensions. Failure to maintain the required insurance coverage may result in termination of this Contract or administrative error sanctions.

**Article 5: Confidentiality and Security**

Contractor agrees that all of its employees, contractors, subcontractors, and associates will maintain the confidentiality of all juvenile records and identifying information.

## **Article 6: Administrative Error Sanctions**

**Section 1:** TJJD, based on information from monitoring or other verifiable sources, may, for the reasons set forth in the Article discussing termination below, terminate this Contract or take other actions including, but not limited to:

- a. Requiring Contractor to take specific corrective actions in order to remain in compliance with the terms of this contract; and/or
- b. Recouping payment made to Contractor; and/or
- c. Imposing recommendations from audit or investigative findings, and minor or major sanctions; and/or
- d. Assessing (agreed-to) liquidated damages for each instance of non-compliance with the terms of this Contract; and/or
- e. Suspending, placing into abeyance, or removing any contractual rights including, but not limited to, withholding payment.

**Section 2:** Contractor shall cooperate fully with TJJD and its authorized representatives in carrying out corrective action plans.

## **Article 7: Termination**

**Section 1:** TJJD may terminate a Purchase Order or other similar ordering contractual document or relationship by giving the other party thirty (30) calendar days written notice; provided that such termination does not relieve the State of any cancellation charges as designated in a lease or other contractual document between the parties.

**Section 2:** TJJD shall terminate this Contract in the event that TJJD is not granted funding to pay for the herein described services or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds.

**Section 3:** Cause/Default/Breach: If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, TJJD may, upon written notice of default or breach to the Contractor, immediately terminate all or any part of this Contract upon Contractor's failure to cure within 30 days' written notice of default or breach. Termination is not an exclusive remedy, but exists in addition to any other rights and remedies provided in equity, by law, or under this Contract. TJJD may exercise any other right, remedy, or privilege available to it under applicable law or may proceed by appropriate court action to enforce the provisions of this Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TJJD notifies the Contractor in writing prior to the exercise of such remedy. Contractor shall be liable for all costs and expenses, including court costs, incurred by TJJD with respect to the enforcement of any of the remedies listed herein.

## **Article 8: Funding Out Clause**

This Contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply. This Contract is subject to termination, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature.

## **Article 9: Waiver**

No waiver by either party of any breach or default of the other under this Contract shall operate as a waiver of any future or other breach or default, whether of a like or different character or nature.

## **Article 10: Severability**

If any part of this Contract is contrary to any federal, state, or local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this Contract which can be given effect without the invalid provision or application. To that end, the provisions of this Contract are declared to be severable.

#### **Article 11: Contract Amendment and Merger Clause**

This Contract encompasses the complete and entire agreement of the parties. Neither party has made or relied on any representations, stipulations, nor agreements other than those expressly contained in this Contract. No other contracts, oral or written, shall constitute a part of this Contract unless such is made in writing, executed by the parties hereto or their successors, and expressly made a part of this Contract. This Contract may only be amended or supplemented in a writing, executed by the parties hereto or their successors, and expressly made a part of this Contract, except that TJJD reserves the right to make unilateral minor administrative changes to correct typographical errors, change the TJJD contract identification number, or increase any applicable "not to exceed" amount if necessary for continuation of services.

#### **Article 12: Notice of Changes**

**Section 1:** Contractor shall notify TJJD immediately in writing in advance of any significant change affecting the Contractor, including but not limited to change of Contractor's name or identity, location of services, ownership or control, operating entity, governing board membership, key personnel, payee identification number, and other significant changes that may affect the delivery of services under the terms of this Contract.

**Section 2:** Contractor shall not transfer or assign this Contract or enter into any subcontract for the services under this Contract without prior written approval from TJJD.

**Section 3:** Contractor shall not relocate the services provided under this Contract without prior written approval from TJJD.

#### **Article 13: Notice**

Required notices will be provided to the Director of Business Operations and Contracts at the TJJD Central Office at 11209 Metric Boulevard, Building H, Suite A, Austin, Texas 78758, and to Canon Solutions America, Inc. at One Canon Park, Melville, NY 11747, Attn: Executive Vice President, Sales & Marketing, with copies to Attn: VP, Legal and to Canon Financial Services, Inc., 158 Gaither Drive, Suite 200, Mount Laurel, NJ 08054, Attn: Portfolio Management Dept.

#### **Article 14: Governing Law and Venue**

In any legal action arising under this Contract, the laws of the State of Texas shall apply and venue will be in Travis County, Texas.

#### **Article 15: Problem Solving in the Ordinary Course of Business**

**Section 1:** The parties to this Contract shall use the procedures contained in this Article for routine problem solving. These procedures may also be used if a party is asserting a claim for breach of contract. Should these procedures not resolve claims for breach of this Contract, the procedures contained in Article 16 shall be followed thereafter.

**Section 2:** Informal Resolution: Contractor and TJJD staff will communicate regularly and engage in informal problem solving efforts as a routine measure, thus preventing differences from becoming major problems. When routine measures have been exhausted, Contractor and TJJD staff are encouraged to utilize the following mechanism to resolve problems.

**Section 3:** Formal Resolution:

- a. Contractor or TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution (Statement of Problem).
- b. The Statement of Problem will be submitted to the designated contact unless the problem specifically involves the designated contact, in which case, it will be submitted to the designated contact's supervisor.
- c. Problems are to be addressed within ten working days; written responses will be sent to the individual or program that submitted it, designated contact, and designated contact's supervisor.

**Section 4:** Appeal: Contractor or TJJD Staff desiring to appeal the decision may do so in writing, within ten (10) business days from the date of decision, by providing all pertinent information relevant to the appeal to the designated contact's supervisor if the problem was addressed by the designated contact, or to the Director of Business Operations and Contracts if the problem was addressed by the designated contact's supervisor. When appealed, the problem shall be addressed within fourteen (14) working days, with written responses sent to the individual or program who submitted it, the designated contact, the designated contact's supervisor, and the Director Business Operations and Contracts.

## **Article 16: Claims for Breach of Contract**

**Section 1:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code, as further described herein, must be used by TJJD and Contractor to attempt to resolve any claim for breach of contract made by the Contractor.

- a. Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, Contractor shall submit written notice to the TJJD Executive Director no later than 180 days after the date of the event that gave rise to the claim, stated with particularity as outlined in Section 2260.051. Additionally, said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the TJJD and Contractor as would otherwise be entitled to notice under this Contract. Compliance by Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.
- b. The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TJJD if the parties are unable to resolve their disputes as discussed under subparagraph a. of this Section.
- c. Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. Neither the execution of this Contract by TJJD, nor any other conduct of any representative of TJJD relating to the Contract shall be considered a waiver of sovereign immunity to suit.

**Section 2:** The submission, processing, and resolution of the Contractor's claim is governed by the published rules adopted by TJJD pursuant to Chapter 2260 of the Texas Government Code, as currently effective, hereafter enacted or subsequently amended.

**Section 3:** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor in whole or in part.

## **Article 17: No Third Party Beneficiaries**

The terms of this Contract are for the sole benefit of the parties to the Contract and will not be construed to confer any rights on any other person.

## **Article 18: Audit Clause**

Pursuant to Chapter 321 of the Texas Government Code and Texas Government Code Section 2262.154, Contractor is hereby notified that the Texas State Auditor's Office (State Auditor) may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under that contract. Acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph, concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate, is included in any subcontract it awards.

Contractor shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJD and State of Texas requirements. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TJJD, the State of Texas, or their authorized representatives. Contractor shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TJJD or the State of Texas. Contractor's failure to comply with this Article shall constitute a material breach of this Contract and shall authorize TJJD to immediately assess the liquidated damages. TJJD may require, at Contractor's sole cost and expense, independent audits by a qualified certified public accounting firm of Contractor's books and records or the State's property. The independent auditor shall provide TJJD with a copy of

such audit at the same time it is provided to Contractor. TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Contract.

TJJD may unilaterally amend this Contract to comply with any rules and procedures of the State Auditor, providing notice to Contractor of any changes.

**Article 19: Default**

If Contractor defaults on this Contract, TJJD reserves the right to cancel the Contract if such default remains uncured after 30 days' written notice, and either resolicit bids or award the contract to the next best responsive and responsible contractor/service provider. The defaulting Contractor will not be considered in the resolicitation and may not be considered in future solicitations for the same type of work, unless the specifications or scope of work are significantly different. The period of suspension will be determined by the agency based on the seriousness of the default.

**Article 20: Debt Owed to State of Texas**

Contractor agrees that any payments due under this Contract will be applied towards any debt, including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.

**Article 21: Buy Texas**

In performing this Contract, Contractor shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

**Article 22: Specifications**

The services performed shall be in accordance with the purchase specifications contained herein. TJJD will determine the answers to all questions that may arise as to the interpretation of the specifications and the quality or acceptability of work performed. TJJD will decide the rate of progress of the work and the acceptable fulfillment of the service on the part of the Contractor.

**Article 23: Access to Information**

Contractor is required to make any information created or exchanged with TJJD pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552, available in a format that is accessible by the public and at no additional charge to TJJD. Contractor agrees to provide TJJD with this information in a format that is accessible to the public, including, but not limited to, in a non-encrypted electronic format, PDF, and HTML.

**Article 24: Verification of Worker Eligibility Clause**

**Section 1:** If Contractor is not enrolled in the U.S. Department of Homeland Security's E-Verify system ("E-Verify") at time of Contract award, Contractor shall:

- a. Enroll in the E-Verify program within thirty (30) calendar days of Contract award; and thereafter
- b. Use E-Verify to initiate, within three (3) business days after the date of hire, verification of employment eligibility of all of Contractor's new hires employed during the Contract term to perform duties within Texas and all persons (including subcontractors) assigned by Contractor to perform work, pursuant to this Contract, within the United States.

**Section 2:** If Contractor is enrolled in E-Verify at the time of this Contract award, Contractor shall use E-Verify to initiate, within three (3) business days after the date of hire, verification of employment eligibility of all of Contractor's new hires employed during the Contract term to perform duties within Texas and all persons (including subcontractors) assigned by Contractor to perform work, pursuant to this Contract, within the United States.

**Section 3:** Contractor shall comply with the requirements of the E-Verify program Memorandum of Understanding (MOU). If the Department of Homeland Security (DHS) or the Social Security Administration (SSA) terminates Contractor's MOU and denies access to the E-Verify system in accordance with the terms of the MOU, TJJD may terminate this Contract.

**Section 4:** Contractor shall include the requirements of this clause, including this paragraph (appropriately modified for identification of the parties), in each subcontract under this Contract that is for services or construction.

**Section 5:** Contractor shall provide, upon request of TJJD, an electronic or printed image of the confirmation or non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for each Contractor employee, subcontractor, and subcontractor employee that meet the criteria above, following any required E-Verify protocols to allow for the provision of such information.

**Section 6:** If Contractor fails to comply with the requirements of this clause, TJJD may terminate this Contract, withhold payment, or impose other administrative error sanctions.

**Section 7:** The requirements of this clause only apply to contracts for services or construction.

**Article 25: Assignment**

Without the prior written consent of TJJD, Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

**Article 26: Compliance with Other Laws**

In the execution of this Contract, Contractor shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety and environmental protection. Contractor shall make itself familiar with and at all times shall observe and comply with all federal, state and local laws, ordinances and regulations which in any manner affect performance under this Contract.

**Article 27: Force Majeure**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**Article 28: Transition of Services**


Upon the expiration of this Contract and all renewal options, Contractor, if not awarded the new contract, will work with the new vendor to ensure a smooth transition for the removal and replacement of the copiers for all TJJD facilities in the State of Texas.

**Article 29: Execution Authority**

Contractor represents and warrants that the individual signing this Contract is authorized to sign this document on behalf of Contractor and to bind Contractor under this Contract.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Contract as of the day and year last below written.

**For Contractor:**

 CHARLES BRUSCHI SVP FINANCE 3-30-17  
Signature Printed Name Title Date



**For the Texas Juvenile Justice Department:**

 3/29/17  
David Reilly, Executive Director Date

**Approved as to form:**

 3/29/17  
TJJD Attorney Date

**EXHIBIT A, PART A**  
**CONTRACT NUMBER CON0000735**  
**MASTER OPERATING LEASE AGREEMENT**  
**BETWEEN**  
**THE TEXAS JUVENILE JUSTICE DEPARTMENT**  
**AND**  
**CANON FINANCIAL SERVICES, INC.**

- 1. Definitions.** Capitalized terms used in this Exhibit and not otherwise defined will have the meanings set forth in Contract CON0000735 (the Contract).
- (a) "Assets" refers to the products as allowed within the Contract, including the Hardware, Software, and related Services, which are specifically identified on Exhibit B. Assets includes any items associated with the foregoing, including, but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
  - (b) "Contract" refers to the Contract (CON0000735) into which this Exhibit A, Part A is incorporated, with a term of April 1, 2017, through March 31, 2022, unless extended (Contract Term).
  - (c) "Event of Default" is defined in Section 23, "Default."
  - (d) "Event of Loss" means an event of loss, theft, destruction, or damage of any kind to any item of the Assets, including the loss, theft, or taking by governmental action of any item of the Assets for a stated period extending beyond the Contract Term.
  - (e) "Hardware" refers to the computer machinery and equipment specifically identified on Exhibit B.
  - (f) "Lease" means the financing transaction described in this MOLA.
  - (g) "Lessee" means Texas Juvenile Justice Department (TJJD).
  - (h) "Lessor" means Canon Financial Services, Inc.
  - (i) "MOLA" means this Master Operating Lease Agreement (Exhibit A, Part A). Any reference to "MOLA" includes the Contract, Contract Exhibits, and any amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.
  - (j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in Exhibit B.
  - (k) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on Exhibit A, Part B, Maintenance and Support Agreement.
  - (l) "Software" refers to the computer programs specifically related to Hardware identified on Exhibit B.
  - (m) "Stipulated Loss Value", also "SLV", is the value of each unit of Hardware at various times during the Lease as agreed upon by the parties, but which in no event will exceed its fair market value.

## **2. Lease.**

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Texas Business and Commerce Code Chapter 2A. Under no circumstances shall this MOLA or the Contract entered into in conjunction with it be construed as a "finance lease" as defined in Texas Business and Commerce Code Section 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Texas Business and Commerce Code Section 2A.511.
- (b) In accordance with the provisions of Request for Proposal (RFP) 644-7-120916, Lessor's Proposal dated January 17, 2017, Best and Final Offer (BAFO) submitted on March 8, 2017, and the Contract, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on Exhibit B.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Contract, listed in Exhibit B. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.
- (d) TJJD has made an independent legal and management determination to enter into this MOLA and the Contract. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in an amendment to the MOLA, Maintenance and Support Agreement (Exhibit A, Part B), and/or Exhibit B.

## **3. Term of MOLA.**

The term of this MOLA shall commence on April 1, 2017, or upon final signature of the parties, with an expiration date of March 31, 20122, unless the Contract is extended. The term of this MOLA shall continue until the last to occur of the following: (i) the MOLA has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and/or this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

## **4. Intentionally Left Blank.**

## **5. Administration of MOLA.**

- (a) When Lessee wishes to lease additional Assets under this MOLA, Lessee will submit its request directly to Lessor. Lessor shall apply any applicable pricing discounts as agreed upon by Lessee and Lessor and submit the lease proposal to Lessee. If Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease with Lessee. Exhibit B will be adjusted accordingly.
- (b) All leasing activities in conjunction to this MOLA shall be treated as a "purchase sale." Notwithstanding treatment of this Lease as a "purchase sale" as to the transaction between Lessor and Lessee under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 ("Lease") hereof for the transaction(s) between Lessor and Lessee.

- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Contract Term, and the Rent Payments), Lessor's order acknowledgement form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until the Contract is executed by Lessor and a Lessee, TJJD is not obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to Lessee.

#### **6. Rent Payments.**

- (a) During the Contract Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the monthly Rent Payments set forth in Exhibit B for each Asset. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Contract have been paid in full. If the Contract Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Contract Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in Exhibit B for each day from the Contract Commencement Date (including the Contract Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Contract Commencement date is the 15<sup>th</sup> of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.
- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MOLA (and the Contract), and applied to reduce future Rent Payments. All Rent Payments shall be paid to Lessor at 14904 Collections Center Drive, Chicago, IL 60693-0149, or the address stated on the Contract or any other such place as Lessor or its assigns may hereafter direct to Lessee. In making payments to Lessor, Lessee shall submit payment within thirty (30) calendar days after the goods are received, the applicable services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251 of the Texas Government Code.

Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or the Contract or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced, or subject to offset or diminished as a result of any past, present, or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

#### **7. Liens.**

Lessee shall keep the Assets free and clear of all levies, liens, and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

#### **8. Appropriation of Funds.**

Lessee intends to continue the Contract for the Contract Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Contract Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Contract Term for any Fiscal Period (TJJD's fiscal year begins September 1 and ends August 31 of the following year) of Lessee beyond the Fiscal Period first in effect at the commencement of the Contract Term, Lessee may terminate the Contract with regard to those of the Assets listed on Exhibit B so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on Exhibit B will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 ("Option to Extend; Surrender of Assets") of this MOLA, and Exhibit B shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Contract Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds, or monies of Lessee or the State of Texas, as applicable, beyond the Fiscal Period for which sufficient funds have been appropriated to make Rent Payments hereunder.

#### **9. Assignment of Warranties.**

This MOLA is intended to be a true lease and operating lease as defined in Texas Business and Commerce Code Chapter 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the Contract, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 ("Remedies") hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Contract Term unless due to Lessor's acts or omissions: (i) Lessee's dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Contract Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title, or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

#### **10. Inspection and Acceptance.**

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time period, the Assets shall be deemed accepted by Lessee as of the twentieth (20<sup>th</sup>) business day, as described above. In the event Lessee does not accept the Assets, Lessor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Contract on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer

or licensor, as applicable. Lessor and its assigns, including either of their respective agents, shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

#### **11. Installation and Delivery; Use of Assets; Repair and Maintenance.**

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals, or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

#### **12. Relocation of Hardware and Software.**

Except as set forth in the Contract, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another location of Lessee within the continental United States, provided Lessee is not in default on the Contract and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

#### **13. Taxes.**

Unless otherwise agreed by the parties in the Contract, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on Exhibit B, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration

hereafter imposed, assessed, or payable during the term of the Contract, including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the Contract, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the Contract.

#### **14. Ownership.**

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title, or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain Lessor's personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

#### **15. Option to Extend; Surrender of Hardware and Software Assets.**

- (a) Not less than ninety (90) days prior to the expiration of the initial Contract Term, Lessor shall notify Lessee in writing of options to extend the Contract for continued use of the Hardware or Software specified in the Contract. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of the Contract Term. In the event the Lease is extended for some but not all of the Hardware and Software specified in the Contract, Exhibit B shall be updated to reflect those changes. At the end of the Contract Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.
- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Contract, Lessee, at its cost and expense, shall promptly return the Hardware, freight prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware ("Return Condition"), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee's cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to by the parties. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Contract for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in the Contract or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee's premises, or any other premises where the Hardware may be found, to take possession of and to remove the Hardware, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and

hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee's obligation to return Hardware may, at Lessor's option, be specifically enforced by Lessor.

**16. Quiet Enjoyment.**

During the Contract Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 ("Default") of the MOLA) has not occurred.

**17. Warranties regarding the Assets.**

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

**18. No Warranties by Lessor regarding the Assets.**

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software "as is". Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service, or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee's request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

**19. Risk of Loss.**

Commencing upon delivery and continuing throughout the Contract Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified in the Contract (Exhibit B), whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Contract. If an Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Contract Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Contract Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Contract Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

**20. Representations and Warranties of Lessee.**

Lessee represents and warrants for the benefit of Lessor and its assigns, as of the time of execution of the MOLA and the Contract between Lessor and Lessee:

- (a) Lessee is a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code). Lessee has made an independent legal and management determination to enter into this transaction;
- (b) This Contract and MOLA by Lessee has been duly authorized, executed, and delivered by Lessee and constitutes a valid, legal, and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent, or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of a contract between Lessor and Lessee;
- (d) The entering into and performance of the Contract between Lessor and Lessee, this MOLA, or any Contract document will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any contract between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or the Contract between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient, and economic operation, and Lessee will sign and provide to Lessor, upon execution of the Contract and MOLA between Lessor and Lessee hereto, additional written certification to that effect if requested by Lessor; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Contract document associated with this MOLA, (ii) the persons executing a Contract document have been duly authorized to execute the document on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information, and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

**21. Intentionally Left Blank.**

## **22. Representations and Warranties of Lessor.**

Lessor represents and warrants for the benefit of TJJD:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and the Contract executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal, and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent, or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or the Contract;
- (d) The entering into and performance of the MOLA or the Contract will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and the Contract thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or the Contract;
- (f) Lessor acknowledges that TJJD is a Texas state agency and therefore subject to the Texas Public Information Act (Act), and that TJJD as a Texas state agency will comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

## **23. Default.**

Lessee shall be in default under the Contract upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee's material breach of this MOLA, Contract, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law; (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment, or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, Contract, or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

## **24. Remedies.**

### **(a) Lessor's Remedies.**

- i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
  - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate the Contract executed by Lessor and Lessee;

- B. without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Contract;
- C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Contract is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order, or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns, or the agents of either, to enter upon the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;
- D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:
  - I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Contract Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the Stipulated Loss Value of the Hardware at the end of the Contract Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
  - II. without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs), and expenses associated with collecting said sums; and
  - III. interest on (I) from the date of default at 1 1/2% per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs, or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease, or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Contract Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage, and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.

- iii. No termination, repossession, or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.
- (b) **Lessee's Remedies.** Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Texas Business and Commerce Code Sections 2A.508 through Section 2A.522, including without limitation, the right to cancel the Contract and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.
- (c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or the Contract does not prevent that party from enforcing its rights at a later time.

**25. Notices and Waivers.**

- (a) All notices relating to this MOLA shall be delivered to Lessee or Lessor as specified in the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to the Contract shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown in the Contract or to another address subsequently specified in writing by the appropriate parties thereof. Lessee and Lessor intend and agree that a photocopy or facsimile of this MOLA or the Contract and all related documents, including, but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of the Contract shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

**26. Assignment by Lessor; Assignment or Sublease by Lessee.**

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and the Contract, Lessor may (i) assign all or a portion of Lessor's right, title, and interest in this MOLA and/or Contract; (ii) grant a security interest in the right, title, and interest of Lessor in the MOLA, Contract, and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under the Contract; and Lessee leasing Hardware under the MOLA understands and agrees that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under this MOLA and the Contract executed between it and Lessor. Lessor shall remain liable for performance under the MOLA and the Contract executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and the Contract executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge, or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except as otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

**27. Delivery of Related Documents.**

If requested and not otherwise required elsewhere in this MOLA or in the Contract, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) Incumbency Certificate; and (e) other documents specified in the Contract as being reasonably required by Lessor.

**28. Miscellaneous.**

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessee and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA and the Contract may be amended only by written instrument executed by Lessor and Lessee and expressly made a part of the applicable document.

**For the Texas Juvenile Justice Department:**

  
\_\_\_\_\_  
David Reilly, Executive Director

3/29/17  
\_\_\_\_\_  
Date

**Approved as to form:**

  
\_\_\_\_\_  
TJJD Attorney

3/29/17  
\_\_\_\_\_  
Date

**EXHIBIT A, PART B  
CONTRACT NUMBER CON0000735**

**MAINTENANCE AND SUPPORT AGREEMENT  
BETWEEN  
THE TEXAS JUVENILE JUSTICE DEPARTMENT  
AND  
CANON SOLUTIONS AMERICA, INC.**

The Terms and Conditions of CON0000735 (Contract), Master Operating Lease Agreement (MOLA) (Exhibit A, Part A), and all appendices and addendums thereto, including this Maintenance and Support Agreement (Agreement) are the only terms and conditions governing Maintenance and Support Services (Services) provided by Canon Solutions America, Inc. (Canon) or any authorized Service Provider, Order Fulfiller, or Reseller in support of the Contract.

**1. TERM.** Maintenance for the eligible customer (Customer) under the Contract and this Agreement shall start on the date of installation (the "Start Date") for newly installed equipment (inclusive of standard embedded Canon-brand software) (the "Equipment") for devices that are supported by Maintenance and Support Services, all of which are toner inclusive. The Start Date is stated on the service order form for all previously in-place Equipment. The Contract in conjunction with the MOLA is for a five (5) year term to end March 31, 2022. An additional renewal term or extension may be negotiated by the parties for a period not to exceed one (1) year. A renewal or extension may be exercised by thirty (30) day advanced written notice to Canon. Upon mutual written agreement, an amendment will be issued to the Contract extending the MOLA and Maintenance Agreement. This may be in the form of Customer Purchase Order issued prior to the then-effective expiration date.

**2. CHARGES.** Maintenance charges are combined with lease payment into a single fixed fee for each piece of Equipment contained in Exhibit B, Pricing Schedule. Payments shall be made in accordance with Section II of Contract CON0000735. Customer's maintenance and lease charges will be combined into a single charge and will appear on Customer's monthly invoice. All lease and rentals include Maintenance Services which include consumable supplies such as, but not limited to photoconductor, drums, toner, staples, ink, and developer, excluding paper. Termination will be handled in accordance with the MOLA and Contract. Canon may terminate this Agreement if Customer uses the consumables in a manner that is not intended by this Agreement. There will not be any overage charges associated with this service. In the event Customer's usage changes over the course of the performance period, adjustments may be recommended by Canon to change the model to "right size" the equipment to better match the model to actual usage. Canon will conduct quarterly reviews of Customer's usage to insure equipment models match its usage. Canon is committed to helping Customer reduce costs whenever possible. Customer shall bear all risk of loss, theft, or damage to unused and all remaining consumables, which shall remain Canon's property and shall be returned promptly upon termination of this Agreement. Unless otherwise indicated on the service order form, Customer authorizes Canon to use networked features of the Equipment including imageWARE Remote to receive software updates, activate features/new licenses, and/or transmit use and service data accumulated by the Equipment over Customer's network by means of an HTTPS protocol and to store, analyze, and use such data for purposes related to servicing the Equipment and product improvement. While meter readings are not required for billing purposes under this Agreement, customer may provide meter readings to Canon for the purpose of tracking usage. In accordance with the meter read option selected by Canon's normal procedures, Canon may request a procedural change of the Customer's meter read options from time to time upon sixty (60) days' written notice. Canon reserves the right to verify the accuracy of any meter readings from time to time. Meter readings will not be used to access overage charges. Under this Agreement overages will not be charged under any circumstance.

**3. COVERED SERVICE.** Canon shall provide all routine preventive maintenance and emergency service necessary to keep the Equipment in good working order in accordance with this Agreement and Canon's

normal practice. Such service shall be performed during Customer's designated local regular business hours. Customer shall afford Canon reasonable access to the Equipment to perform on-site service. Canon may terminate its maintenance obligations as to any Equipment if Customer relocates Equipment to a site outside of Canon service territory. If any Equipment cannot be maintained in good working order through Canon's routine Maintenance Service Schedule, Canon may upon mutual agreement with Customer substitute comparable Equipment. Parts or Equipment replaced or removed by Canon in connection with Maintenance Services hereunder shall become the property of Canon and Customer disclaims any interest therein. Canon shall make available to Customer from time to time upgrades and bug fixes for the software licensed as part of the Equipment ("Embedded Software") at no cost. Upgrades requested by Customer that exceed Maintenance Service obligations may be provided by Canon at an additional cost. Customer is required to use Canon for installation of any upgrades and bug fixes for Equipment in which Customer does not have total ownership. To the extent that Customer owns the Equipment, Canon shall have no responsibility for any performance or other issues that may result from such installation other than those that were installed by Canon. Embedded Software as used herein does not include third party application software which may be provided by Canon to Customer. Application software or other product that is not listed in this Agreement or Contract shall not be installed on any Equipment provided under the Contract.

**4. DATA.** Customer acknowledges that the hard drive(s) on the Equipment, including attached devices, may retain images, content or other data that Customer may store for purposes of normal operation of the Equipment ("Data"). Customer acknowledges that Canon is not storing Data on behalf of Customer. With the understanding that TJJD may have sensitive information stored on Equipment, Canon will make every reasonable effort to prevent the exposure or access to the Data by an outside party. Confidentiality shall be handled in accordance with wiping procedures described in Canon's proposal. Canon agrees that all Equipment equipped with hard disk drives (e.g. printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of the Equipment in accordance Department of Defense procedures and with Texas Administrative Code, Title 1, Chapter 202 (1 TAC 202). Documentation of completed hard disk drive erasure shall be made available to Customer, i.e. certification/validation/report. Under the terms of this Agreement and at the direction of Customer, Canon has an obligation to erase or overwrite Data upon Customer's return of the Equipment to Canon or leasing company. Customer is solely responsible for: (i) Customer's compliance with applicable law and legal requirements pertaining to data privacy, storage, security, retention, and protection; and (ii) all decisions related to erasing or overwriting Data. Without limiting the foregoing, Canon will: (a) enable the Hard Disk Drive (HDD) data erase functionality that is a standard feature on certain Equipment; and/or (b) prior to return or other disposition of the Equipment, utilize the HDD Data Erase feature that can perform up to a 3-pass overwrite of Data (for Equipment not containing data erase functionality as a standard feature), or a replacement hard drive in which case Customer should properly destroy the replaced hard drive. Customer understands there may be an additional charge for hard drive removal. Customer may purchase from Canon an HDD Data Encryption Kit option which disguises information before it is written to the hard drive using encryption algorithms. The terms of this Section 4 shall solely govern as to Data, notwithstanding that any provisions of this Agreement or any separate confidentiality or data security or other agreement now or hereafter entered into between Customer and Canon could be construed to apply to Data to the extent that it does not conflict with Customer data security policy.

**5. OBLIGATION OF MAINTENANCE FUNDS.** Canon is not responsible for the monitoring of Customer machine usage to insure that billings do not exceed the dollar amounts indicated on the Equipment orders. Under this Agreement, usage will not be tracked for billing purposes. The proposed rates for each piece of Equipment include both the lease and maintenance cost. This fixed rate will not change for the term of the lease. An annual review of these costs will be conducted and if it is determined that the overall market costs are decreasing, the Customer may request a reduction in costs. Any reduction would be by mutual consent of the parties. Canon is committed to working with Customer to reduce costs whenever possible throughout the term of the Contract.

**6. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY.** Warranties shall adhere to the Canon's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return

policies for other similarly situated Customers for like products. Limitation of Liability under this Agreement is defined as follows: for any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Canon's liability for damages of any kind to the Customer shall be limited to the total amount paid to Canon under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Canon's liability shall not apply to claims of bodily injury; violation of intellectual property rights, including, but not limited to, patent, trademark, or copyright infringement; indemnification requirements under the Contract; and violation of State or Federal law including, but not limited to, disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation. Canon shall perform the Services described in this Agreement and the Contract in a professional and workman-like manner and in accordance with all applicable laws and regulations.